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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-1390

THE REPUBLIC OF PARAGUAY and
JORGE J. PRIETO, Ambassador of the Republic of Paraguay to the United States, and
JOSÉ MARÍA GONZALEZ AVILA, Consul General of the Republic of Paraguay to the United States,
Petitioners,

— v. —

JAMES S. GILMORE III, Governor of the Commonwealth of Virginia, *et al.*,
Respondents.

Supreme Court, U.S.
FILED
1998
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPLICATION FOR STAY OF OR INJUNCTION AGAINST EXECUTION PENDING DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

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Dated: March 31, 1998

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APPLICATION FOR STAY OF OR INJUNCTION AGAINST EXECUTION PENDING DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

To the Honorable William H. Rehnquist, Chief Justice of the United States and Circuit Justice for the Fourth Circuit, petitioners the Republic of Paraguay, Jorge J. Prieto, as Ambassador of the Republic of Paraguay to the United States, and José María Gonzales Avila, as Consul General of the Republic of Paraguay to the United States (collectively, "Paraguay"), respectfully submit this application for a stay

of the execution of Paraguay's national, Angel Francisco Breard, now scheduled for April 14, 1998, or, in the alternative, an order enjoining respondent Virginia officials from carrying out the execution, pending resolution of Paraguay's petition for a writ of certiorari and, if the writ is granted, further order of this Court.

There is a reasonable probability that this Court will grant Paraguay's petition and a significant possibility that it will reverse the lower court's judgment. If Breard is executed before the Court rules, however, Paraguay will be irrevocably deprived of the opportunity to obtain any remedy for the conceded violation of the treaty rights it seeks to vindicate here. A stay or injunction should issue.

FACTS AND PRIOR PROCEEDINGS

Paraguay brought this action to protect its rights under the Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 (the "Vienna Convention"), and the Treaty of Friendship, Commerce and Navigation, Feb. 4, 1859, U.S.-Para., 12 Stat. 1091 (the "Friendship Treaty") (together, the "Treaties"). Seeking relief under *Ex parte Young*, 209 U.S. 123 (1908), Paraguay alleges that by carrying out Breard's conviction and death sentence, Virginia officials are presently violating Paraguay's rights under the Treaties or, at a minimum, causing Paraguay to suffer continuing consequences from an earlier violation of the Treaties. The District Court held that Paraguay had standing to bring the suit, but dismissed the action for lack of subject matter jurisdiction on grounds of the Eleventh Amendment

and the *Rooker/Feldman* doctrine. *Paraguay v. Allen*, 949 F. Supp. 1269 (E.D. Va. 1996).

On January 22, 1998, the Court of Appeals affirmed the District Court's judgment on Eleventh Amendment grounds, holding that Paraguay did not allege an ongoing violation of federal law and did not seek prospective relief. *Paraguay v. Allen*, 134 F.3d 622 (4th Cir. 1998). The court stated, however, that it "shared the district court's expressed 'disenchantment' with the Commonwealth's conceded past violation of Paraguay's treaty rights" and noted the "disturbing implications in that conduct for larger interests of the United States and its citizens." *Id.* at 629.

Also on January 22, 1998, the Court of Appeals affirmed the District Court's dismissal of Breard's petition for a writ of habeas corpus, which rested in part on the Vienna Convention. *Breard v. Pruett*, 134 F.3d 615 (4th Cir. 1998). On February 18, 1998, the Court of Appeals denied Breard's petition for rehearing and suggestion for rehearing en banc.

On February 20, 1998, Paraguay filed its petition for a writ of certiorari (the "Petition") in this Court. *Paraguay v. Gilmore*, No. 97-1390. The Petition was docketed on February 24.

On February 25, 1998, by an order attached hereto as Exhibit 1, the Arlington County Circuit Court, Commonwealth of Virginia, set April 14, 1998, as the date for Breard's execution.

On March 11, 1998, Breard filed a petition for a writ of certiorari. *Breard v. Pruett*, No. 97-8214. Paraguay understands that Breard recently filed an application for stay of execution with this Court.

By letter dated March 24, 1998, respondents advised the Clerk of this Court that they did not intend to file a response to the petition.

Today, March 31, 1998, by an order attached hereto as Exhibit 2, the Court of Appeals denied Paraguay's application for a stay of or injunction against Breard's execution.

REASONS FOR GRANTING THE STAY OR INJUNCTION

I.

THIS COURT SHOULD STAY OR ENJOIN THE EXECUTION BECAUSE PARAGUAY MEETS ANY APPLICABLE STANDARDS.

A. Paraguay Satisfies the Requirements for Granting a Stay In the Face of an Impending Execution.

A request for provisional relief, whether in the form of a stay or an injunction, pending the Supreme Court's consideration of a petition for certiorari calls into play the same equitable considerations. The applicant must demonstrate (a) a likelihood that irreparable harm will result if the interim equitable relief is not granted; (b) a reasonable probability that four Justices of the Court would consider that the case had sufficient merit to warrant granting a writ of certiorari; (c) a significant possibility of reversal of the lower court's decision; and (d) in appropriate cases, potential harm to

the applicant exceeding that to the respondent and the public interest favoring a stay. *See Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers) (temporary injunction); *American Trucking Associations, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J., in chambers) (temporary injunction); *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) (White, J., in chambers) (stay of execution); *Rosker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers) (stay of lower court mandate). *But see Turner Broadcasting System, Inc. v. Federal Communications Commission*, 507 U.S. 1301, 1302 (1993) (Rehnquist, C.J., in chambers) (applying different standard to request for injunctive relief denied by lower courts, on application to single Justice in chambers) (discussed in Part I.B below).

Paraguay so demonstrates here. *First*, the execution of Paraguay's national -- an act that would irrevocably eliminate any possibility of vindicating Paraguay's rights under the Treaties -- has now been set for April 14. The requirement "that irreparable harm will result if a stay is not granted . . . is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring).

Second, there is a reasonable probability that this Court will grant Paraguay's petition for certiorari. Paraguay contends that the writ should be granted because (a) the Court of Appeals' holding eviscerates the consular notification provisions of the Vienna Convention, to which the United States itself attaches the highest importance, Petition at 10-16 (Part I); (b) the holding departs from settled

doctrine by imposing two new requirements on an *Ex parte Young* plaintiff seeking protection against the continuing consequences of even a completed violation of federal law, Petition at 16-21 (Part II); (c) this Court should review cases that fall within its original jurisdiction but arrive at the Court on a petition for certiorari where, as here, there are no factors outweighing the presumption that, in accord with the constitutional scheme, this Court should hear the case, Petition at 22-24 (Part III.A); and (d) the Framers intended this Court to review cases where a grant of relief might prevent an international law claim from moving to the international plane -- as here, by means of an application by Paraguay to the International Court of Justice, which would have compulsory jurisdiction over the application pursuant to the Optional Protocol to the Vienna Convention, Petition at 22, 25-29 (Part III.B).

For the reasons more fully set forth in the Petition, the Vienna Convention and *Ex parte Young* questions raised by the Fourth Circuit's decision and presented by the petition independently warrant granting the writ. Petition at 10-21. In this case, moreover, they arise in a case to which the Framers ascribed special importance. Because this case involves the rights of consuls under an international obligation of the United States, it falls within this Court's original jurisdiction. U.S. Const., art. III, § 2, cl. 2. Out of respect for the self-described limitations on this Court's role as a court of first instance, Paraguay chose to file first in the District Court. Now that the case has arrived on a petition for certiorari, however, the Court should grant the writ unless it can

> say with assurance that (1) declination of jurisdiction would not disserve any of the principal policies underlying the Article III jurisdictional grant and (2) the reasons of practical wisdom that persuade us that this Court is an inappropriate forum are consistent with the proposition that our discretion is legitimated by its use to keep this aspect of the Court's functions attuned to . . . its other responsibilities.

Ohio v. Wyandotte Chem. Corp., 401 U.S. 493, 499 (1971) (application to exercise concurrent original jurisdiction).

The Court will not be able to say that here. Because this case arrives at the Court in the posture of a dismissal of a complaint and hence on a set of facts assumed to be true, it calls upon the Court's competence as an appellate tribunal. In addition, because of the prospect that, if not resolved in the United States courts, this case will become an international dispute subject to the compulsory jurisdiction of the International Court of Justice under the Optional Protocol to the Vienna Convention, it is precisely the kind of case that the Framers intended this Court in particular and the federal courts in general to resolve. Indeed, though it affirmed the District Court on a jurisdictional ground, the Court of Appeals recognized the critical international dimension to this case when it emphasized the importance of the Vienna Convention to its many signatories and the danger to United States interests if officials of this country do not comply with the Convention. *See Paraguay v. Allen*, 134 F.3d at 629 & n.7; *see also Paraguay v. Allen*, 949 F. Supp. at 1273; *Breard v. Pruett*, 134 F.3d at 622 (Butzner, J., concurring) ("freedom and safety [of American citizens] are seriously endangered if state officials fail to honor the Vienna Convention and other nations

follow their example"), *aff'g Breard v. Netherland*, 949 F. Supp. 1255, 1263 (E.D. Va. 1996) ("Virginia's persistent refusal to abide by the Vienna Convention troubles the Court."). Thus, this Court will likely grant the writ.

Third, there is a significant possibility that this Court will reverse the Court of Appeals' judgment by rejecting its holding on either or both of the Vienna Convention and *Ex parte Young* grounds. The narrow reading of the consular notification provisions of the Vienna Convention on which the court's *Ex parte Young* holding rests is inconsistent with the treaty text, the position the United States has itself expressed on other occasions, and the fundamental principle that treaties should be read to give effect to their purpose. Petition at 10-16 (Part I). Article 36 of the Vienna Convention is clearly intended to guarantee not merely *access*, but effective consular *assistance* to a detained foreign national. Consular assistance to a criminal defendant can only be effective if it is provided prior to and during trial -- the "main event," as this Court has emphasized, of a criminal prosecution. *McFarland v. Scott*, 512 U.S. 849, 859 (1994).

Further, the two new requirements that the Court of Appeals engrafted onto the continuing-consequences doctrine of *Ex parte Young* -- that the violation against the consequences of which plaintiff seeks protection be ongoing, and that the relief sought not "undo" the illegal conduct of which plaintiff complains -- are inconsistent with the very premises of that doctrine. Petition at 16-21 (Part II); *see, e.g., Milliken v. Bradley*, 433 U.S. 267 (1977). Contrary to the conclusion of the

Court of Appeals, the requirement of an ongoing violation does not bar suit so long as the *Ex parte Young* plaintiff seeks protection from the ongoing consequences of a violation of federal law. This Court's decision in *Milliken* so demonstrates: there "*the antecedent violation*" of de jure segregation was no longer ongoing, but relief was granted to "dissipate the continuing effects of *past misconduct*." 433 U.S. at 290 (emphasis added). Likewise, it simply cannot be said that Paraguay seeks "retrospective" relief when it asks the federal courts to stop an execution *that has not yet occurred.*

Fourth, the "stay equities" clearly favor granting the stay in this case. *California v. American Stores Co.*, 492 U.S. 1301, 1307 (1989) (O'Connor, J., in chambers); *United States Postal Service v. National Association of Letter Carriers, AFL-CIO*, 481 U.S. 1301, 1302 (1987) (Rehnquist, C.J., in chambers); *see also Rosker*, 448 U.S. at 1310-1311 (Brennan, J., in chambers). Whatever harm would be done the Virginia officials by a delay in executing Breard, there can be no doubt that, given the impending execution, the balance of hardships favors Paraguay. The "interests of the public at large" also counsel in favor of granting a stay, *Rosker*, 448 U.S. at 1308 (Brennan, J., in chambers), as the Court of Appeals emphasized the public interest in compliance with the Vienna Convention even while affirming the dismissal of Paraguay's case on jurisdictional grounds. 134 F.3d at 629 & n.7; *see also Breard v. Pruett*, 134 F.3d at 622 (Butzner, J., concurring).

B. Paraguay Also Satisfies the Alternative Standard for Granting An Interim Injunction Suggested by Some Justices.

Some individual Justices have expressed the view that a different standard applies to requests for interim relief depending upon whether the applicant seeks suspension of the effect of a judgment rendered below or protection against action about to be taken. *See Turner Broadcasting System, Inc. v. Federal Communications Commission*, 507 U.S. 1301, 1302 (1993) (Rehnquist, C.J., in chambers); *Ohio Citizens for Responsible Energy, Inc. v, NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers). *But see Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers) (using standard applied in requests for stay discussed in Part I.A above to grant injunction); *American Trucking Associations, Inc. v. Gray*, 483 U.S. 1306 (Blackmun, J., in chambers) (same). These Justices divide requests to maintain the status quo into two categories: "a stay, which temporarily suspends 'judicial alteration of the status quo,' [and] an injunction [which] 'grants judicial intervention that has been withheld by the lower courts.'" *Turner Broadcasting System*, 507 U.S. at 1302 (quoting *Ohio Citizens for Responsible Energy*, 479 U.S. at 1313)). According to these Justices, a single Justice should grant an injunction "only if (1) 'necessary or appropriate in aid of [the Court's] jurisdiction,' 28 U.S.C. § 1651(a), and (2) the legal rights at issue are 'indisputably clear.'" *Turner Broadcasting System*, 507 U.S. at 1303; *Ohio Citizens for Responsible Energy*, 479 U.S. at 1313.

The Court need not resolve on this application any conflict between the standard articulated in these decisions and that discussed in Part I.A. *First*, the decisions distinguishing between a stay and an injunction appear to be rooted in the limited authority of a Circuit Justice to act for the full Court. *See id.* ("The Circuit Justice's injunctive power is to be used sparingly and only in the most critical and exigent circumstances") (internal quotations omitted); *see also Turner Broadcasting System*, 507 U.S. at 1303 (where "single member of the Court is asked to delay the will of Congress to put its policies into effect at the time it desires," utmost circumspection is appropriate) (internal quotation omitted). Given that sufficient time remains before the scheduled execution, Paraguay understands that, under the Court's operating procedures, this application will be referred for consideration by the full Court. A standard calibrated to reflect the exceptional instances in which a single Justice must act on behalf of the Court should not constrain the authority of the full Court.

Second, Paraguay's application meets the requirements of even the alternative standard. Enjoining the execution of Breard is clearly necessary in aid of the Court's jurisdiction, because if the execution is not enjoined, the Petition will no longer rest on a live case or controversy, this action will be mooted, and the Court will lack jurisdiction. *See Wainwright v. Booker*, 473 U.S. 935, 936 (1985) (Powell, J. concurring) ("the Court ordinarily should not permit an execution to moot [its] consideration of a case that [it] had agreed, or probably would agree, to hear on the

merits"). In addition, given the "conceded . . . violation" of the Vienna Convention, *Paraguay v. Allen*, 134 F.3d at 629, and for the reasons discussed at length in the Petition, the legal rights at issue in this case are "indisputably clear." *Turner Broadcasting System*, 507 U.S. at 1303 (internal quotation omitted).

Should the Court determine that it needs to resolve which of these two standards it should apply to Paraguay's application, it should hold that the standard discussed in Part I.A above governs all requests for an order maintaining the status quo pending consideration of a petition in this Court. The distinction between an injunction and a stay articulated by *Turner Broadcasting System* and *Ohio Citizens for Responsible Energy* reduces to whether the applicant won or lost in the lower courts. While the decisions of the Court of Appeals and the District Court are certainly relevant to assessing an application for an order maintaining the status quo, the weight of those decisions is amply accounted for by the *Barefoot* requirement that it be reasonably probable that four Justices will vote to grant the writ and significantly possible that five will vote to reverse on the merits. In cases meeting the *Barefoot* standard, an injunction maintaining the status quo necessarily is "appropriate in aid of [the Court's] . . . jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). In this case, for the reasons just discussed, such an order is also "necessary" in aid of the Court's jurisdiction. *Id.*

II.

NONE OF THE ADDITIONAL REASONS RESPONDENTS URGED IN THE COURT OF APPEALS COUNSEL AGAINST A STAY OR INJUNCTION.

In opposing Paraguay's motion for a stay or injunction in the Court of Appeals, respondents argued that (1) the relief Paraguay seeks is barred by *Gomez v. United States District Court*, 503 U.S. 653 (1992), and *Lonchar v. Thomas*, 517 U.S. 314 (1996); and (2) there is no reasonable prospect of reversal because Paraguay's suit is (a) barred by the *Rooker/Feldman* doctrine and (b) nonjusticiable. Appellees' Opposition to Appellants' Motion to Stay Angel Breard's Execution, served March 25, 1998 ("Stay Opp.") (attached as Exhibit 3 to this application), at 3-8. None of these arguments has merit.[1]

A. *Gomez* and *Lonchar* Are Inapposite.

Paraguay does not now and has never purported to "speak for Breard." Stay Opp. at 4. Paraguay did not file a petition for habeas corpus, and it does not purport to speak as Breard's "next friend" or in any other derivative capacity. To the contrary, Paraguay brings this action to vindicate *its own rights* under the Vienna

1. In light of the issues raised by respondents in opposing Paraguay's application in the Court of Appeals, Paraguay also attaches its own brief to the Court of Appeals ("Paraguay Br."), respondents' opposition brief ("Appellees' Br."), the brief *amicus curiae* of the United States on the justiciability issue ("U.S. Br."), Paraguay's reply brief ("Paraguay Reply"), and the brief *amicus curiae* of a group of international law professors ("Int'l Law Br.") on the justiciability issue as Exhibits 4 through 8, respectively.

Convention and Friendship Treaty. Pet. App. A40-A57 (Complaint); *see, e.g.*, *Paraguay v. Allen*, 134 F.3d at 626 (Paraguay's claim "based directly upon Paraguay's treaty rights"); U.S. Br. at 23-24 ("Paraguay is not seeking to invoke a habeas remedy on behalf of Breard; Paraguay has made clear instead that it is suing solely in order to vindicate its own rights under treaties with the United States").

Because Paraguay is not Breard and does not purport to speak on his behalf, this Court's decision in *Gomez*, the statement about *Gomez* in *Lonchar* on which respondents rely, and the series of orders respondents cite are simply inapposite. Stay Opp. at 3-5. According to respondents, this Court made clear in *Gomez* "that a suit under 42 U.S.C. § 1983 cannot be employed to obtain a stay of execution that would be precluded under the rules governing successive federal habeas petitions." Stay Opp. at 3. The plaintiff in *Gomez*, however, was a prisoner who could bring a habeas petition and, indeed, had already brought four of them. 503 U.S. at 653. By contrast, Paraguay, to state the obvious, is not in custody; it could not have sought relief on its own behalf by way of habeas; and it therefore cannot be denied relief on the basis of "rules governing successive federal habeas petitions" that its action cannot possibly implicate.

There is no easy way even to analogize Paraguay's action to a successive habeas petition. If an analogy could be drawn, however, Paraguay's suit -- the first action it brought seeking the requested relief -- would have to be treated as a first habeas petition, which general equitable principles cannot bar. *Lonchar*, 517 U.S. at

328-29. Moreover, far from engaging in "abusive delay" or "last-minute attempts to manipulate the judicial process," *Gomez*, 503 U.S. at 654; *see Lonchar*, 517 U.S. at 338 (Rehnquist, C.J., concurring in the judgment), Paraguay has moved diligently at every stage of this litigation, including filing its petition in this Court two months early and before Breard's execution date had even been set. Whatever the import of *Gomez* and *Lonchar*, they have no application here.

B. Paraguay's Suit Is Not Barred by *Rooker/Feldman*.

In opposing Paraguay's application for a stay or injunction in the Court of Appeals, respondents relied on the *Rooker/Feldman* doctrine to contend that the "lower federal courts . . . have no jurisdiction to conduct what is, in effect, a direct review of the State court criminal judgment against Breard." Stay Opp. at 7; *see also* Appellees' Br. at 14-17. Without citing or discussing *Johnson v. De Grandy*, 512 U.S. 997 (1994), the District Court relied on *Rooker/Feldman* as an alternative ground of dismissal. *Paraguay v. Allen*, 949 F. Supp. at 1273 (citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)). The Court of Appeals did not address the issue. *Paraguay v. Allen*, 134 F.3d at 626 & n.4.

In *Johnson*, this Court rejected the precise argument respondents make here -- and needed only a paragraph to do so. 512 U.S. at 1006; *see* Paraguay Br. at 22-26; Paraguay Reply at 4-7. There, defendant Florida officials argued that *Rooker/Feldman* barred the United States' challenge under the Voting Rights Act to a redistricting plan that the Florida Supreme Court had upheld in an action to which the

United States was not a party. Holding that *Rooker/Feldman* does not apply where the federal plaintiff "was not a party in the state court" and thus "was in no position to ask [the Supreme Court] to review the state court's judgment," this Court rejected the argument. 512 U.S. at 1006.

Likewise here, Paraguay was not and could not have been a party in the criminal prosecution of Breard, and it could not have taken an appeal from the conviction and sentence or ultimately sought review in this Court. If *Rooker/Feldman* did not bar the United States' suit in *Johnson* even though a favorable outcome would have effectively nullified the Florida Supreme Court's judgment, Paraguay's suit is not barred here regardless of its effect on Breard's conviction and sentence. 512 U.S. at 1006; *see* Paraguay Br. at 22-26; Paraguay Reply at 4-7.

C. Paraguay's Action Is Justiciable.

In opposing Paraguay's application for a stay or injunction in the Court of Appeals, respondents also argued that Paraguay's action raises "non-justiciable 'political questions.'" Stay Opp. at 7-8; *see also* Appellees' Br. at 21-22; U.S. Br. at 11-23. The District Court held, to the contrary, that Paraguay could bring an action for breach of the Treaties. *Paraguay v. Allen*, 949 F. Supp. at 1274; *see also* Paraguay Reply at 8-22; Int'l Law Br. at 3-12. The Court of Appeals did not address justiciability. *Paraguay v. Allen*, 134 F.3d at 626 & n.4.

The District Court was plainly correct in concluding that Paraguay's action for violation of a treaty is justiciable. As the United States conceded to the

Court of Appeals, this Court squarely so held in *Wildenhus's Case*, 120 U.S. 1, 17 (1887) ("[W]e see no reason why [the Belgian consul] may not enforce his rights under the treaty by writ of habeas corpus in any proper court of the United States."); *see* U.S. Br. at 21; *see also* Pet. at 9 n.3; Paraguay Reply at 13-14. The United States was also careful in the Court of Appeals not to question the right of sovereigns to sue to vindicate legal rights generally, *see* U.S. Br. at 22 (citing *Pfizer, Inc. v. India*, 434 U.S. 308 (1978)); *see also Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), yet it provided no principled ground on which to carve out a suit on a treaty -- an instrument that accords legal rights to the sovereign as such. U.S. Br. at 22-23. Nor did the United States attempt to square the position it articulated in the Court of Appeals with its *amicus*-support of the sovereign plaintiff in *Argentina v. New York*, 250 N.E.2d 698 (N.Y. 1969), a suit brought to enforce consular rights under pre-Vienna Convention customary international law.

Indeed, of all the cases upon which the United States relied in the Court of Appeals in support of the proposition that a sovereign may not sue on a treaty, only one actually involved a suit by a sovereign, and in that case the court did not question the sovereign's right to sue. *Compare* U.S. Br. at 11-23 *with* Paraguay Reply at 16-20. The United States placed principal reliance on *The Head Money Cases*, 112 U.S. 580, 597-98 (1884), but simply misconstrued the holding of that case and the rule for which it stands. In *The Head Money Cases*, this Court held that, because United States law accords equal dignity to a treaty and a federal statute, a court in the United States must

give effect to a subsequently enacted federal statute even if enforcement of the statute would cause the United States to violate an earlier treaty and hence give rise to the "international negotiations and reclamations" to which the Court referred. Stay Opp. at 7 (quoting 112 U.S. at 598); *see* Restatement (Third) of Foreign Relations Law of the United States § 115 & reporter's note 1 (1987). Here, however, far from suggesting that any subsequent congressional enactment has vitiated the effect of the Vienna Convention or diminished its status as the supreme law of the land, the United States and the lower courts have emphasized the vitality of the Convention and its importance to United States' interests. *See* U.S. Br. at 1, 23; *Paraguay v. Allen*, 134 F.3d at 629 & n.7; *Paraguay v. Allen*, 949 F. Supp. at 1273; *see also Breard v. Pruett*, 134 F.3d at 622 (Butzner, J., concurring), *aff'g Breard v. Netherland*, 949 F. Supp. 1255, 1263 (E.D. Va. 1996). Thus, the rule of *The Head Money Cases* is inapposite here. *See* Paraguay Reply at 16-20; Int'l Law Br. at 5-7.

Finally, respondents find no support in the modern political-question doctrine. By this action, Paraguay asks a federal court to order state officials to comply with two treaties made by the President and consented to by the Senate. Such an order could not possibly encroach upon the powers allocated to the political branches on the federal level. *See Baker v. Carr*, 369 U.S. 186, 210 (1962) ("it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the 'political question'"); Paraguay Reply at 20-22.

CONCLUSION

For the foregoing reasons, Paraguay respectfully requests that this Court grant (a) a stay of execution of Paraguay's national, Angel Francisco Breard, now scheduled for April 14, 1998, pending resolution of Paraguay's petition for a writ of certiorari and, if the writ is granted, further order of the Court, or (b) in the alternative, an order temporarily enjoining respondent Virginia officials from carrying out the execution subject to the same terms.

Dated: March 31, 1998

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CERTIFICATE OF SERVICE

I, Donald Francis Donovan, Counsel of Record for Petitioners the Republic of Paraguay, Ambassador Jorge J. Prieto and Consul General José María Gonzalez Avila, hereby certify under penalty of perjury that all parties required to be served with the petition for certiorari by the Rules of the Supreme Court of the United States have been served. On March 31, 1998, I caused a copy of the Application for Stay of or Injunction Against Execution Pending Disposition of Petition for Writ of Certiorari to be served by Express Mail of the United States Postal Service upon each of the following:

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